

**ORDINANCE NO. \_\_\_\_\_, SERIES 2007**

**AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO 2007 HOUSE BILL 549 TO BE KNOWN AS THE MUSEUM PLAZA DEVELOPMENT AREA, DESIGNATING THE METRO DEVELOPMENT AUTHORITY, INC. AS AN “AGENCY”, APPROVING ENTERING INTO A LOCAL PARTICIPATION AGREEMENT, AUTHORIZING THE RELEASE OF THE “RELEASED AMOUNT” PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL PARTICIPATION AGREEMENT, REQUIRING THE SUBMISSION OF REGULAR REPORTS TO THE COUNCIL AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES AUTHORIZED BY THIS ORDINANCE.**

**SPONSORED BY: Councilman David Tandy**

**WHEREAS**, the 2007 General Assembly enacted 2007 House Bill 549 (the “Act”) relating to tax increment financing and urban redevelopment, which Act authorizes the Signature Project Program to encourage private investment in the development of major projects that will have a significant impact in the Commonwealth; and

**WHEREAS**, Museum Plaza, LLC (“Developer”) intends to undertake a major project in downtown Louisville which will include a new contemporary art museum, residential condominiums, luxury hotel, Class A office space, retail and restaurant outlets, a parking garage and a public plaza and other public infrastructure, as more particularly described in Exhibit A attached hereto (the “Project”); and

**WHEREAS**, the Project will cost in excess of \$200 million and will represent new economic activity in the Commonwealth and therefore qualifies as a “Signature Project” under the Act; and

**WHEREAS**, the Council finds that the Development Area as illustrated on Exhibit B (the “Development Area”) attached hereto is an area in need of public improvement and the Project to be undertaken in the Development Area by the Developer will result in the increase in the value of property located in the Development Area and will result in increased employment within the Development Area; and

**WHEREAS**, the use of tax increment financing has proven to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a “Signature Project”, within the meaning of the Act and as presented by Developer, to enable Louisville and the Commonwealth to use tax increment financing to encourage major economic development projects, is a worthy public purpose; and

**WHEREAS,** Louisville Metro is authorized under the Act to execute a local participation agreement or contract with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

**WHEREAS,** the Metro Development Authority, Inc. (“MDA”) is organized and incorporated as a non-profit, non-stock corporation organized on behalf of Louisville Metro pursuant to KRS Chapter 58; and

**WHEREAS,** Louisville Metro desires to assist Developer with the costs of the Project and agrees to enter into this Local Participation Agreement with MDA in order to pay to MDA the Released Amount (as hereinafter defined) for use solely for purposes of the Project; and

**WHEREAS,** the Development Area was previously established by the Metro Council pursuant to Ordinance No. 235. Series 2006 and MDA was previously designated as the agency for such area pursuant to the provisions of a former state law, thus this Ordinance shall re-establish the Development Area and re-designate the Agency pursuant to the Act and shall continue to, in part, clarify the Development Area Exemptions in Ordinance No. 226, Series 2006.

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**Section 1.** That the Council finds as follows:

- A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.
- B. The establishment of the Development Area shall not cause the assessed value of taxable real estate in all development areas located in Louisville Metro to exceed 20% of the assessed value of all taxable real property in Louisville Metro.
- C. There exists inadequate public infrastructure in the Development Area and the costs required to repair and improve existing infrastructure and to construct new infrastructure impedes the development of commercial property within the Development Area.
- D. As supported by the data and findings contained in Exhibit C, attached hereto:
  - 1. There is inadequate public improvements in the Development Area; and
  - 2. The development of commercial property and the undertaking of other economic development activities in the Development Area are currently impeded by a combination of factors impairing such development; and
  - 3. The Development Area will not reasonably be developed without public assistance; and
  - 4. The public benefits to be derived by the Development Area justify the public costs to Louisville Metro; and

5. Although the area immediately surrounding the Development Area has been subject to the growth and development through investment by private enterprise, the Development Area could not be developed without substantial new and relocated infrastructure, the cost of which would present a significant barrier to investment by private enterprise and, therefore, public assistance is required.

**Section 2.** That the Development Area as illustrated in Exhibit B is designated as a development area pursuant to the Act and shall be named the Museum Plaza Development Area and shall be established as of the effective date of this Ordinance and shall terminate on the earlier of (a) the termination of the Local Participation Agreement, and (b) 40 years from the date hereof.

**Section 3.** That the Metro Development Authority, Inc., a Kentucky non-profit corporation is hereby designated as the Agency, pursuant to the terms of the Act, which shall be the recipient of the Released Amount under the Local Participation Agreement and shall oversee and administer the implementation of the Development Area. No less than annually, MDA shall submit a report to the Division of Tax Increment Financing within the Office of the Commissioner of the Kentucky Department of Revenue (i) certifying the use of the Released Amount for the payment of approved project costs within the Development Area, and (ii) providing an accounting of the receipt and use of the Released Amount.

**Section 4.** That the Mayor is authorized to negotiate and enter into a Local Participation Agreement with MDA substantially in the form attached hereto as Exhibit D, for the release to MDA of a portion of the New Revenue and the Transient Room Tax Revenue (as these terms are defined in the Local Participation Agreement) (“Released Amount”) to be derived by Metro Louisville within the Development Area.

**Section 5.** That MDA as the Agency for the Project is authorized to enter into the Local Participation Agreement with the City and a Grant Agreement pursuant to the terms of the Act (“Grant Agreement”) with the Commonwealth of Kentucky (“State”);

**Section 6.** That the Department of Finance is designated as the department in Louisville Metro to oversee the payment of the Released Amount and to review all documentation concerning the Project, its progress, costs and development. The Department of Finance shall annually submit to the Council a report concerning the Development Area including but not limited to:

- A. An accounting of all payments made to MDA pursuant to the Local Participation Agreement;
- B. An analysis and review of development activity within the Development Area;
- C. The progress made toward meeting the stated goals of the Development Area;
- D. An accounting of the Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs incurred by Developer or its affiliates.

**Section 7.** That the Council authorizes Louisville Metro to pay annually to MDA, the Released Amount which shall be a sum no less than 80% of the New Revenue and 80% of the Transient Room Tax (as calculated pursuant to the Local Participation Agreement) subject to the following conditions.

- A. The City shall have no obligation to pay the Released Amount to MDA until the State and MDA have entered into the Grant Agreement;
- B. The City shall withhold payment of the Released Amount until the State certifies to the City, pursuant to the terms of the Local Participation Agreement that the minimum capital investment equal to \$200 million has been made in the Project (the “Minimum Capital Investment”). Until such time that the Minimum Capital Investment has been made, the Department of Finance shall deposit the Released Amounts into an escrow account. Upon the certification of the Minimum Capital Investment, the Department of Finance shall pay to MDA the accumulated balance of the Released Amount in the escrow fund (“Escrowed Amount”). In the event that the Minimum Capital Investment is not certified by a date ten (10) years from the effective date of this Ordinance, the Escrowed Amount shall be paid into the General Fund.
- C. In no event shall the total of the Released Amount paid to MDA over the term of the Local Participation Agreement exceed the Eligible Project Costs as defined in the Local Participation Agreement.

**Section 8.** That MDA shall establish a Special Fund pursuant to the Act for the Development Area as set forth in the Local Participation Agreement.

**Section 9.** That the Mayor and other appropriate Louisville Metro officials, and each of them, for and on behalf of Louisville Metro, are authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville Metro under and pursuant to the Local Participation Agreement and related documents, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville Metro officials are further authorized, empowered and directed for and on behalf of Louisville Metro to execute all papers, letter, documents, undertakings, certificates, assignments, forms, instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Ordinance and the Local Participation Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of Louisville Metro under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville Metro under the Local Participation Agreement and related documents.

**Section 10.** This Ordinance shall take effect upon passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Rick Blackwell  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze, Jefferson County Attorney

By:\_\_\_\_\_

## **EXHIBIT A**

### **Description of Project**

Museum Plaza is a planned \$490 million, 1.5 million square foot project to be constructed on Louisville's Ohio River riverfront. Its planned development program includes:

- New non-profit contemporary art museum
- 250 room Westin hotel, fitness center, spa, pool, meeting rooms, ballroom and other function space
- 175 residential condominiums
- 270,000 square feet of Class A office space
- Restaurants, bars and limited retail shops
- University of Louisville's Master of Fine Arts program and glass blowing hot shop
- 850 parking spaces in garage
- New public park connecting to City's Ali Center plaza, to West Main Street, and to the riverfront
- Renovation and update of Fort Nelson Park
- Preservation and stabilization of 4 historic facades on West Main Street
- In-fill of West Main Street property, including a new pedestrian promenade to connect West Main Street and City's Ali Center plaza
- River Road extended west to 8th Street
- 8th Street extended north to River Road
- Washington Street straightened and made continuous between 6th and 8th Streets
- Pedestrian bridge over 6th Street to connect Belvedere and City's Ali Center plaza
- Removal of LG&E transmission tower and underground duct banks, as well as other buried fiber optic cables
- Additional flood walls surrounding building

Museum Plaza will be 62 stories at its highest point, rising 703 feet.

Construction is scheduled to begin in October 2007 and be completed by the end of 2010.

**EXHIBIT B**

Map of Development Area

[See Next Page]

## **EXHIBIT C**

### **Museum Plaza Data and Findings**

The Museum Plaza Development Area is an extremely challenging area to develop because of the existing site conditions that require substantial modification and improvement in order to make the property feasible for development of any sort.



#### **Utility Constraints**

There is an approximately 10 story electricity transmission tower located on the western portion of the property. This tower is a key conduit in the delivery of electricity by LG&E to the entire Downtown area. The tower takes electricity coming in from the west via overhead transmission lines and continues its delivery through east-bound underground transmission ducts, which are concrete and oil encased. Additionally, LG&E has a significant property easement surrounding this tower, on which development cannot readily occur.

In order to create any sense of public enjoyment on the property, the tower must be removed. If the tower remained, (a) its unsightly appearance would significantly negatively impact any public experiences planned on the property, and (b) the LG&E easement significantly shrinks the amount of usable property for development. Further, the underground duct banks need to also be removed and re-routed to permit unique



development on the property because the prominent location of the underground duct bank running from west to east through basically the middle of the entire property limits the location options for a building's foundation and makes construction difficult because of the inability to touch the ducts during or after construction. Finally, if significant construction were to take place on top of the ducts, access to repair the ducts would be limited or eliminated.

In addition to the LG&E challenges, an underground Level 3 fiber optic cable also crosses the property in a fashion which impedes significant development. This underground line must also be removed and re-routed for the same reasons stated above related to the underground LG&E duct banks.

Finally, old, overhead LG&E and Bell South lines and poles exist along Washington Street. In order to improve the Washington Street corridor, these overhead lines and poles must be removed and re-routed via underground conduits.

### Flood Plain

The vast majority of the Museum Plaza Development Area is located in a flood plain and north of the flood wall (the south side being the protected side). Given its location in a flood plain and the propensity of flooding in the northern, lower-most location of the property, any development on this property requires significant work to: (i) raise the project above the flood plain, (ii) provide new and unique flood protection for certain aspects of the development, and (iii) ensure access to the development regardless of flood condition. Further, in order to improve the vehicular access to and from the project, improve the surrounding neighborhood's traffic flow, and preserve a west-bound exist from the adjoining Ali Center parking garage, new gates must be cut into the existing flood wall and a route must be constructed to permit cars to access the entry to the project located above the flood plain. Finally, the insertable flood gates for the 7<sup>th</sup> and Washington Street flood gate are currently stored off-site, making their insertion prior to a flood challenging and expensive. As part of any meaningful development on this property, a new flood gate storage area should be built. Successfully addressing each of these flood-related challenges on the property is difficult and expensive.

### Interstate Highway

The northern boundary of the Museum Plaza Development Area is Interstate 64, a federal interstate highway. Because the grade of the property is lowest at its northern boundary, this highway provides an undesirable overhead northern boundary in the property's current condition. Further, the highway creates significant acoustical issues which must be mitigated in development and adds construction costs because of federal right of way restrictions and safety concerns for highway vehicles. Any development of this property must be raised significantly above the level of the highway in order to permit any enjoyable indoor or outdoor activity and to preserve the important riverfront view of the Falls of the Ohio, which links the historic roots of the property to the historic roots of Louisville.

### Vehicular Access

River Road, an important Downtown road, ends at 7<sup>th</sup> Street, but the Museum Plaza Development Area property extends west to 8<sup>th</sup> Street. Additionally, traffic on Washington Street cannot travel continuously because through traffic is not possible with the street's current configuration. In order to facilitate any meaningful development on the property, good vehicular access and egress is critical for success. Further, the development's impact on existing Downtown traffic must be considered. Therefore, in order to address these constraints, River Road must begin its westward expansion, 8<sup>th</sup> Street must be extended north to River Road, and Washington Street must be straightened and made into a street which permits thru traffic.

### Pedestrian Connections

The Museum Plaza Development Area is located on Louisville's important Ohio River riverfront; adjacent to a riverfront walking, jogging, and biking trail; in the midst of the Historic West Main Street museum and cultural district; and, immediately adjacent to the City's new public plaza west of the Muhammad Ali Center. The property also includes Fort Nelson Park and historic Main Street parcels and it connects to the Louisville Science Center with a pedway. In order to develop this property consistent with the City's Downtown Master Plan and in a fashion which improves pedestrian connections amongst existing and planned assets, constructing safe, simple and significant pedestrian routes is critical. To implement this goal requires the construction of: a pedway over 6<sup>th</sup> Street between the Belvedere and the new City plaza; a pedway over both Washington Street and its adjoining flood wall between the Main Street parcels and the new City plaza; pedestrian access through Fort Nelson Park; and, an intuitive connection from the property's western boundary which facilitates the flow of pedestrians to and from the attractions located west of the property along Main Street. The pedway connection to the Science Center must also be rebuilt and improved.

### Historic Building Facades

The City's buildings located at 615-621 were in disrepair, unstable and near collapse. The facades were also rapidly deteriorating; in fact, one façade had a tree growing out of the spaces between its bricks. In order to develop this property and provide a public pedestrian promenade to connect Main Street and Ali Center, these buildings needed to be removed, while preserving the historic facades and stabilizing the adjacent buildings which share brick, load bearing, party walls. Following these efforts, a new in-fill project can be constructed at this site behind the historic building facades.

### Site Remediation

In order to build on this site, certain environmental site remediation actions must be taken; this includes excavating, hauling and properly disposing of non-hazardous, slightly contaminated existing fill material. This material is consistent with the contaminants encountered and removed during the construction of the Muhammad Ali Center.

## Conclusion

Any meaningful development in the Museum Plaza Development Area requires creative solutions to all of the infrastructure challenges discussed above. The expense involved in addressing these challenges is significantly higher than typical infrastructure work involved in urban development projects.

**EXHIBIT D**

Local Participation Agreement

[See Following Pages]